

This case has previously been before the Board on appeal. In an August 4, 1998 decision, the Board affirmed Office decisions which found that appellant did not sustain an emotional condition while in the performance of duty. The Board further found the evidence of record insufficient to establish that he sustained a recurrence of disability in early 1994 and September through October 1995 causally related to the accepted July 20, 1985 employment

injuries.<sup>1</sup> The facts and circumstances surrounding the first appeal are contained in the Board's decision and are hereby incorporated by reference.

On May 6, 2000 appellant filed a claim for compensation (Form CA-7) for the period March 29 through May 29, 2000. The Office received a May 17, 2000 medical report of Dr. William D. Penn<sup>2</sup> and reports dated May 15 and 17, 2000 of Dr. Barbara E. Scott, a Board-certified internist, which diagnosed thoracic back strain. She indicated that appellant was released to return to work on March 15, 2000 without restrictions. On May 17, 2000 Dr. Scott indicated that he was released to return to work without restrictions on March 8, 2000. She indicated that she examined appellant on February 29, 2000 and that he had a thoracic back strain/sprain. Dr. Scott indicated that appellant returned to full-duty work on February 29, 2000 with no restrictions.

In August 28, 2000 reports, Dr. Ara Zerahian, a general practitioner, listed a diagnosis of cervical and lumbar disc problems. Dr. Zerahian indicated with an affirmative mark that appellant's medical problems were caused by the July 20, 1985 employment injuries. He stated that appellant was being treated for reaggravation of his July 1985 employment injuries. Dr. Zerahian further stated that his back problems made it uncomfortable for appellant to perform light-duty work and it was unclear at that time as to when or if he would be able to return to work.

By letter dated May 24, 2000, the Office advised appellant that he may have sustained a recurrence of disability beginning March 29, 2000. The Office noted the criteria for establishing a recurrence of disability and advised him that, if his situation met such criteria, then he should file a Form CA-2a.

In June 14 and July 21, 2000 attending physician's reports, he indicated with an affirmative mark that appellant's conditions were caused by the July 20, 1985 employment injuries. Dr. Zerahian stated that appellant sustained a recurrence of his July 20, 1985 employment injuries. He stated that appellant awoke one day with cervical and thoracic pain with discomfort and torticollis.

On July 24, 2000 appellant filed a Form CA-7 for the period June 16 through July 1, 2000. He submitted Dr. Zerahian's May 19, 2000 report which diagnosed cervical disc syndrome and indicated that this condition began on March 29, 2000 and would last until June 15, 2000. Dr. Zerahian stated that appellant was not able to perform the functions of his position because his right shoulder and right paracervical spine ached and he was unable to abduct his right shoulder.

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<sup>1</sup> Docket No. 96-1098 (issued August 4, 1998). On July 20, 1985 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim alleging that he was attacked by a dog that day while delivering mail and twisted his back in trying to escape. The Office accepted his claim for lumbar strain, lumbar disc displacement with myelopathy and aggravation of a cervical strain. Appellant accepted a limited-duty position on December 8, 1986 and returned to full-duty work on July 30, 1990. On September 1, 1992 the Office granted him a schedule award for a three percent loss of use, of each leg.

<sup>2</sup> The professional qualifications of Dr. Penn cannot be determined from the record.

On August 22, 2000 appellant filed a Form CA-2a alleging that he sustained a recurrence of disability beginning March 29, 2000. He filed a Form CA-7 on August 25, 2000 for the period August 1 through September 1, 2000.

In an August 30, 2001 duty status report of a physician whose signature is illegible, which diagnosed degenerative joint disease of the spine and noted appellant's physical limitations. In a September 14, 2000 report, Dr. Zeharian indicated that appellant was still under his care and treatment for cervical disc problems. He stated that he could continue to work part-time but that appellant must be allowed to get up and move around (walk) every hour for at least 10 to 15 minutes.

On October 3, 2000 appellant filed a Form CA-7 for the period September 1 through October 7, 2000. He submitted Dr. Zeharian's September 29, 2000 report which diagnosed cervical and lumbar disc problems and indicated with an affirmative mark that these problems were caused by the July 20, 1985 employment injuries.

By decision dated October 6, 2000, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning March 29, 2000 causally related to the July 20, 1985 employment injuries. The Office found that appellant failed to submit rationalized medical evidence establishing a causal relationship between the accepted employment injuries and the claimed recurrence of disability.

On November 27, 2000 appellant filed a Form CA-7 covering the period October 7 through December 31, 2000. In a December 26, 2000 letter, Dr. Zeharian indicated that appellant was able to start work four to five hours, five days a week beginning December 27, 2000.

On December 28, 2000 appellant filed a Form CA-7 for the period December 2, 2000 through January 31, 2001. By letter dated January 10, 2001, the Office advised him that it could not award compensation for the periods October 7 through December 31, 2000 and December 2 through January 31, 2001 in light of the October 6, 2000 decision.

In an October 3, 2001 letter, appellant requested reconsideration of the Office's October 6, 2000 decision. In an x-ray report dated October 8, 2001, Dr. Steven A. Schopler, a Board-certified orthopedic surgeon, noted a 40 degree upper right thoracic curve with some extension into the basicervical region. The lateral view of the thoracic spine showed a 50 degree thoracic kyphosis. The cervical spine showed narrow disc spaces at C5-6 and C6-7 with spondylotic change.

In an October 8, 2001 report, Dr. Schopler diagnosed nonindustrial scoliosis and cervical spondylosis at C5-6 and C6-7. He stated that appellant reached permanent and stationary status years ago and this overall status remained unchanged. Dr. Schopler's October 8 and December 26, 2001 duty status reports indicated that appellant suffered from back strain and noted his physical limitations.

By decision dated May 8, 2002, the Office denied modification of the October 6, 2000 decision. The Office found the evidence of record insufficient to establish that he sustained a recurrence of disability causally related to the accepted July 20, 1985 employment injuries.

On September 19, 2002 Dr. Rolando A. Atiga, a Board-certified family practitioner, prescribed use of an ergonomic chair with full back rest and medication. Dr. Atiga diagnosed scoliosis and degenerative disc disease. On October 11, 2002 he diagnosed lumbar disc displacement with myelopathy and disc protrusions at C4-5, C5-6 and C6-7. Dr. Atiga indicated with an affirmative mark that the diagnosed conditions were caused by the July 20, 1985 employment injuries and aggravated by a motor vehicle accident and scoliosis.

In a March 6, 2003 report, a physical therapist whose signature is illegible indicated that appellant sustained cervical and lumbosacral strains. A magnetic resonance imaging (MRI) scan report dated March 11, 2003 from Dr. Steven M. Cohen, a Board-certified radiologist, revealed disc degeneration with disc protrusion/osteophytes ridge at C4-5, C5-6 and C6-7. Mild cord impingement and central canal stenosis were also noted at these levels and varying degrees of neural foraminal compromise. An MRI scan of the lumbar spine found mild spondylosis changes at L3-4 and L4-5 and no central canal stenosis or nerve root impingement.

In reports from Dr. Kyle H. Landauer, a Board-certified orthopedic surgeon, dated March 10 through May 27, 2003, he diagnosed cervical strain, intermittent bilateral upper extremity radiculopathy, thoracic myofascial strain, lumbar strain with bilateral lower extremity radiculopathy and left sacroiliac joint strain, chronic inflammation at multiple sites, edema swelling and limited joint motion. Dr. Landauer stated that appellant's diagnosed conditions of cervical strain with intermittent bilateral upper extremity radiculopathy, thoracic myofascial strain, lumbar strain with bilateral lower extremity radiculopathy and left sacroiliac joint strain started with the July 20, 1985 employment injuries and would last until June 20, 2003. He indicated with an affirmative mark that appellant's lumbar strain, lumbar disc myelopathy and aggravation of cervical strain were caused by the July 20, 1985 employment injuries based on the history presented and his clinical findings.

By decision dated July 30, 2003, the Office denied modification of the May 8, 2002 decision, on the grounds that the evidence of record was insufficient to establish that he sustained a recurrence of disability beginning March 29, 2000 due to his July 20, 1985 employment injuries.

In records dated February 19, 2003 through April 22, 2004, Dr. Landauer noted that appellant had cervical, thoracic and lumbar strains with bilateral upper and lower extremity radiculopathy, thoracic scoliosis, brachial neuritis, left sacroiliac joint strain and disc protrusion at L3-4, L4-5, C3-4 and C6-7 with facet arthropathy and bilateral foraminal stenosis. Dr. Landauer opined in a February 19, 2003 report that appellant's cervical, thoracic and lumbar symptoms and resultant disability were caused by the July 20, 1985 employment injuries based on appellant's history and his clinical findings. On May 20, 2003 he opined that his pain "may" be the result of his July 20, 1985 employment injuries and that his neck and back spasms were reaggravated by two motor vehicle accidents.

In an October 13, 2003 report, Dr. Titima Williams, a chiropractor, diagnosed sciatica, noting that an x-ray report revealed straightening of the cervical curve, decreased disc height at C5-6 and mild osteophytes formation at C4-6 with regard to the cervical spine. Dr. Williams stated that the remaining osseous structures were grossly intact and the disc spaces were preserved. There was no evidence of osseous or joint pathology and bone density was within

normal limits for appellant's age. Regarding the lumbosacral spine, Dr. Williams reported straightening of the lumbar lordotic curve, generalized mild osteophytes, disc spaces that appeared to be within normal limits, no evidence of osseous or joint pathology and bone density within normal limits for appellant's age. In reports dated November 17 and December 1, 2003, she diagnosed overexertion and strenuous movements, cervical segmental/somatic dysfunction and cervical sprain/strain.

In an April 1, 2004 report, Dr. Landauer provided a history of appellant's July 20, 1985 employment-related injuries, nonwork-related cervical and lumbar injuries resulting from 1987 and 1996 motor vehicle accidents and other alleged employment-related injuries involving the back, right shoulder and cervical and thoracic spines and his medical treatment. He stated that, although appellant sustained multiple injuries following his July 20, 1985 employment injuries, his condition returned to a baseline level that was commensurate with the disability initially imposed. Dr. Landauer opined that as no further appreciable disability occurred as a result of the subsequent injuries his current condition was entirely related to the accepted July 20, 1985 employment-related injuries.

On May 10, 2004 appellant requested reconsideration of the Office's July 30, 2003 decision. He submitted Dr. Landauer's April 29, 2004 report in which he opined that, although appellant sustained multiple injuries following the July 20, 1985 employment injuries, his condition returned to a baseline level that was attributable to the accepted employment-related injuries.

By decision dated June 18, 2004, the Office found that appellant did not sustain a recurrence of disability beginning March 29, 2000 causally related to the July 20, 1985 employment injuries.

### **LEGAL PRECEDENT**

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>3</sup>

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>4</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the

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<sup>3</sup> 20 C.F.R. § 10.5(x) (2002).

<sup>4</sup> *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>5</sup>

### ANALYSIS

In this case, appellant has neither shown a change in the nature and extent of his employment-related conditions or a change in the nature and extent of the limited-duty requirements. The record shows that following the injuries sustained by appellant on July 20, 1985 he returned to work in a limited-duty capacity. The record does not establish nor does appellant allege that the claimed recurrence of total disability was caused by a change in the nature or extent of his limited-duty job requirements. Rather, he has alleged that his accepted conditions have materially changed or worsened since he returned to work and rendered him totally disabled.

Appellant submitted Dr. Penn's and Dr. Scott's reports which diagnosed thoracic back strain/sprain and released him to return to work without restrictions on March 8 and 15, 2000. The Board finds that these reports are insufficient to establish his claim because neither Dr. Penn, nor Dr. Scott addressed whether his thoracic strain was caused by the July 20, 1985 employment injuries.

Dr. Zerahian noted with an affirmative mark, that appellant's cervical and lumbar conditions were caused by the accepted employment-related injuries. On June 14, 2000 Dr. Zerahian explained that he sustained a recurrence of disability of his July 20, 1985 employment injuries. On June 21, 2000 he explained causal relation by noting appellant's symptoms. Dr. Zerahian's reports, however, do not provide any medical rationale explaining how or why his current conditions were caused by the accepted employment injuries and, therefore, the Board finds that his reports are insufficient to establish appellant's claim. This type of report, without more by way of medical rationale explaining how the diagnosed conditions resulted from the accepted employment injuries are insufficient to establish causal relationship and is of diminished probative value.<sup>6</sup>

Similarly, Dr. Zerahian's narrative reports do not provide any medical rationale in support of his opinion that appellant sustained a reaggravation of his July 1985 employment-related injuries which prevented him from performing his light-duty work from March 29 through June 15, 2000. Therefore, the Board finds that his reports are insufficient to establish that appellant sustained a recurrence of total disability beginning March 29, 2000 due to the July 20, 1985 employment injuries.

Dr. Zerahian's September 14 and December 26, 2000 reports indicated that appellant could continue to work part time with certain physical limitations despite his cervical disc problems, but do not address whether he has any residuals or disability beginning March 29, 2000 causally related to the July 20, 1985 employment injuries. Thus, the Board finds that his reports are insufficient to establish appellant's claim.

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<sup>5</sup> *James H. Botts*, 50 ECAB 265 (1999).

<sup>6</sup> *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

In reports dated October 8 and December 26, 2001, Dr. Schopler found that appellant had scoliosis, cervical spondylosis at C5-6 and C6-7 and back strain and his condition reached permanent stationary status years ago and remained unchanged. He, however, failed to address whether appellant sustained a recurrence of disability beginning March 29, 2000 causally related to the July 20, 1985 employment injuries. Therefore, the Board finds that his reports are insufficient to establish appellant's claim.

Dr. Atiga diagnosed scoliosis and degenerative disc disease and ordered an ergonomic chair and medication for appellant but failed to address whether the diagnosed conditions or any resultant disability were caused by appellant's July 20, 1985 employment injuries. Thus, the Board finds that his reports are insufficient to establish that appellant sustained a recurrence of disability beginning March 29, 2000 causally related to his accepted employment injuries. On October 11, 2002 Dr. Atiga indicated with an affirmative mark that appellant's lumbar disc displacement with myelopathy and disc protrusions at C4-5, C5-6 and C6-7 were caused by the July 20, 1985 employment injuries. This is insufficient to establish appellant's claim because he did not provide any medical rationale explaining how or why his current conditions were caused by the accepted employment injuries.<sup>7</sup>

Appellant's physical therapist listed cervical and lumbosacral strains. This does not constitute probative medical evidence as a physical therapist is not considered a "physician" under the Federal Employees' Compensation Act.<sup>8</sup>

Dr. Landauer diagnosed cervical, thoracic and lumbar strains with bilateral upper and lower extremity radiculopathy, left sacroiliac joint strain, chronic inflammation at multiple sites, edema swelling, limited joint motion, thoracic scoliosis, brachial neuritis and disc protrusions at L3-4, L4-5, C3-4 and C6-7, with facet arthropathy and bilateral foraminal stenosis failed to address whether the diagnosed conditions were caused by appellant's July 20, 1985 employment injuries. He opined that appellant's cervical, thoracic, lumbar and left sacroiliac conditions and resultant disability were caused by the July 20, 1985 employment injuries. The Board, however, finds that his reports are insufficient to establish appellant's claim because he did not provide sufficient medical rationale explaining the causal relationship between the diagnosed conditions and the accepted employment injuries. An April 29, 2003 form report indicated with an affirmative mark that appellant's lumbar strain, lumbar disc myelopathy and aggravation of cervical strain were caused by the July 20, 1985 employment injuries. This is insufficient evidence in support of the claim as he failed to provide any medical rationale explaining how or why appellant's conditions were caused by the accepted employment injuries. On May 20, 2003 Dr. Landauer stated that appellant's pain "may" be the result of his accepted employment injuries. This opinion is speculative and without more in the way of medical rationale, does not constitute the basis for the payment of compensation.<sup>9</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357 (2000) (a physical therapist is not a physician under the Act).

<sup>9</sup> *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

Dr. Williams, a chiropractor, diagnosed several conditions, none of which included subluxation as demonstrated by x-ray. Section 8101(2) of the Act<sup>10</sup> defines the term “physician,” to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>11</sup> As Dr. Williams did not diagnose subluxation as demonstrated by x-ray, the Board finds that his reports are insufficient to establish appellant’s claim.

As appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of total disability beginning March 29, 2000 causally related to his July 20, 1985 employment injuries, the Board finds that he has not met his burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of total disability beginning March 29, 2000 causally related to his July 20, 1985 employment injuries.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 2004 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: October 12, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>10</sup> 5 U.S.C. § 8101(2).

<sup>11</sup> See 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services). See *Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).